

March 16, 1999

While Democrats Line the Pockets of Trial Lawyers...

Republicans Champion Patients' Rights by Making Health Coverage Affordable

Tomorrow, the Senate's Health, Education, Labor and Pensions Committee will mark up portions of the "Patients' Bill of Rights — Plus."¹ Democrats on the committee will offer some 20 amendments. The difference between the GOP and Democrat intent is stark:

- ▶ **Republicans are working to expand coverage, strengthen patients' rights, and preserve the states' responsibility for health insurance regulation.**
- ▶ **Democrats are pushing legislation that would cause millions to lose their health coverage, would line the pockets of trial lawyers, and would add unnecessary layers of federal regulation that assume Congress knows best.**

Both the Republican "Patients' Bill of Rights — Plus" (S. 300) and Democrat "Patients' Bill of Rights" alternative (S. 6) include mandates on employers and consumers. But consider what Republicans offer that Democrats do not:

- ▶ **Republicans help uninsured Americans buy coverage and help all Americans to buy better coverage, by restoring fairness to the tax code.**
- ▶ **Expanding medical savings accounts (MSAs), flexible spending accounts (FSAs), and deductibility for the self-employed will make health coverage affordable for millions of Americans.**
- ▶ **By themselves, MSAs answer most — if not all — of the quality concerns patients face. Instead of deferring to insurers, they empower patients, together with their doctors, to make their own medical decisions.**

¹The Committee will mark up S. 326, which contains the non-tax provisions of S. 300.

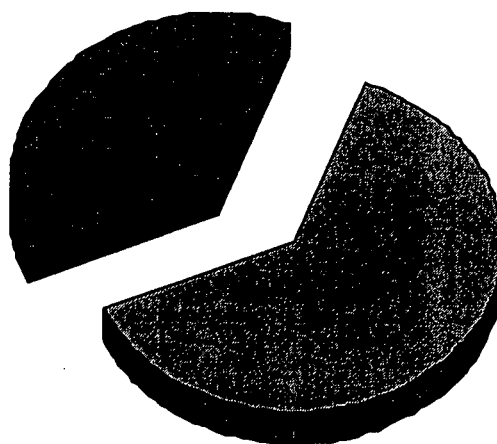
ISSUE #1: THE UNINSURED

Republican bill (S. 300)	Democrat alternative (S. 6)
Makes coverage affordable for millions of uninsured with medical savings accounts (MSAs) and deductibility for the self-employed.	Does <i>nothing</i> to expand coverage. Costly regulations would force another 2 million Americans to lose coverage.

Some 40 million Americans are either chronically uninsured or are left vulnerable to high health care bills when they lose their coverage for months at a time. The Republican "Patients' Bill of Rights — Plus" comes to the aid of these Americans with tax relief that makes coverage easier to afford.

Of Over 50,000 MSA Buyers, One-Third Were Previously Uninsured

**Previously
Uninsured
37%**



**Previously
Insured
63%**

- ▶ One-third of the 50,000 participants in the medical savings account pilot program previously were uninsured.² *The "Patients' Bill of Rights — Plus" would allow all Americans — including the 40 million uninsured — to purchase MSAs.*
- ▶ More than 25 million Americans live in families headed by a self-employed individual. An estimated 5 million of these 25 million Americans are uninsured. *The "Patients' Bill of Rights — Plus" makes coverage more affordable for the self-employed and their families by allowing them to deduct 100 percent of their health insurance premiums in 2000 — three years ahead of schedule.*
- ▶ The Congressional Budget Office estimates the Democrats' "Patients' Bill of Rights" would be *eight times* as costly as the Republican "Patients' Bill of Rights — Plus." Moreover, the Republican bill obviates many of its mandates with MSAs, which enable millions of Americans to avoid disputes with health insurance companies.

Not only do Democrats turn a blind eye to help America's uninsured, their costly mandates and regulations would make health insurance *less* affordable and force more Americans to go without coverage.

- ▶ According to KPMG Peat Marwick's Barents Group (an actuarial firm), *the Democrats' definition of "medical necessity" — which they would impose on the entire health care system — could destroy 191,000 jobs and cause 1.4 million Americans to lose their coverage.*
- ▶ *As a sop to trial lawyers*, Democrats would require millions of Americans to pay for the ability to sue their health plans. *This provision alone would eliminate nearly 240,000 jobs and cause 1.8 million Americans to lose their health coverage.*
- ▶ In a recent survey, *67 percent of employers said they would have to stop offering coverage to their employees if exposed to the lawsuits envisioned in the Democrats' "Patients' Bill of Rights"* (source: U.S. Chamber of Commerce).

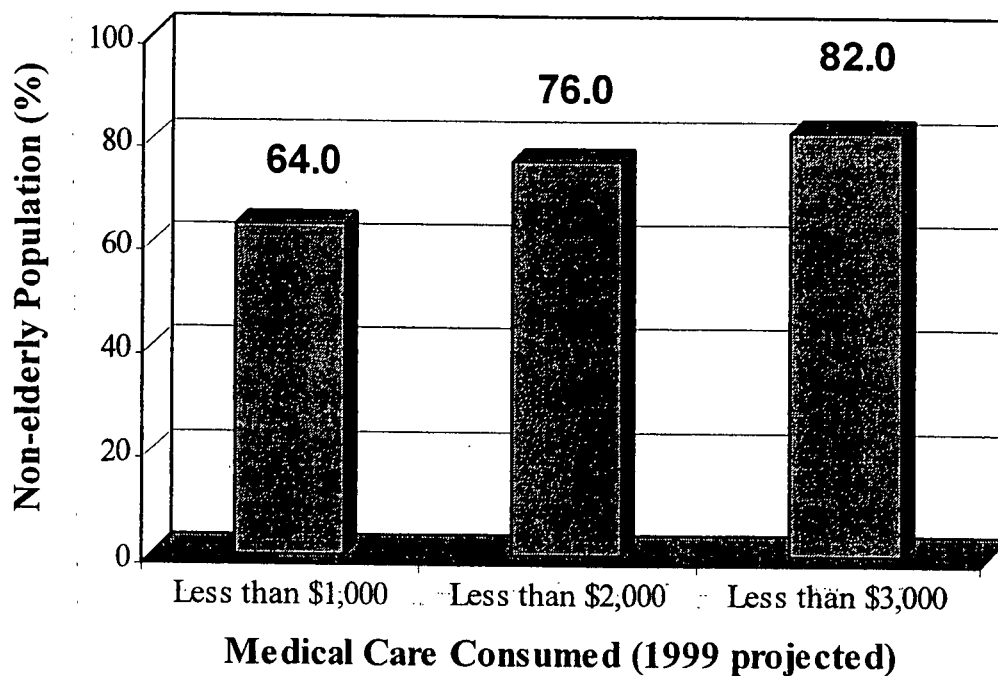
²U.S. General Accounting Office, *Medical Savings Accounts: Results from Surveys of Insurers*, GAO/HEHS-99-34, p. 11-12.

ISSUE #2: WHO DEFINES MEDICAL NECESSITY?

Republican bill (S. 300)	Democrat alternative (S. 6)
Patients and doctors define "medical necessity."	Government bureaucrats, trial lawyers, and judges define "medical necessity."

The Republican "Patients' Bill of Rights — Plus" gives all Americans the option to purchase MSAs and permits employees with flexible spending accounts (FSAs) to "roll over" \$500 per year for future medical expenses. *Together, expanded MSAs and FSAs will allow a majority of Americans to make their own medical decisions, and decide what is "medically necessary," without interference from insurers or government.*

MSAs Would Cover Most People's Medical Expenses Without Bureaucracy



- ▶ *MSAs would allow a majority of Americans to pay all their medical bills tax-free, without any interference from insurance companies.* Over 60 percent of non-elderly Americans consume less than \$2,000 worth of medical care annually, and over 80 percent consume less than \$3,000 worth. A typical MSA would cover *all* their medical expenses — without bureaucratic interference.

- ▶ *Importantly, MSAs allow patients to choose their own doctor.*

- ▶ Expanding flexible spending accounts (FSAs) also will provide greater patient protection. At the beginning of each year, participants set aside pre-tax income in an FSA, from which they pay their medical bills without any bureaucratic oversight. If a participant has money left over in his FSA at year's end, he must "use it or lose it." Republicans would allow participants to "roll over" \$500 in unused FSA funds each year. This nest egg will protect enrollees against future medical expenses and take insurance company bureaucrats out of the picture.

- ▶ *Republicans ensure that "medical necessity" determinations begin and end with doctors.* Denials on the basis of "medical necessity" may be issued "only by a physician with appropriate expertise in the field of medicine involved."

- ▶ Democrats are determined to let bureaucrats, lawyers, and judges decide what is "medically necessary." The Democrats' alternative is ambiguous, and so will require regulations from the Health Care Financing Administration and the Department of Labor, providing ample opportunity for litigation. The Democrats' bill also allows patients to sue their health plans when they believe they were harmed by a wrongful "medical necessity" determination. *Ultimately, bureaucrats, lawyers and judges — not patients or medical experts — will define these terms.*

ISSUE #3: SHOULD WASHINGTON REGULATE IT ALL?

Republican bill (S. 300)	Democrat alternative (S. 6)
A more restrained, less costly regulatory approach; defers to states' local knowledge.	Tramples state authority with unnecessary layers of one-size-fits-all federal regulation.

The Employee Retirement Income Security Act of 1974, or ERISA, prevents states from regulating health insurance provided by employers who self-insure the cost of their health benefits. Some 48 million Americans are covered by self-insured ERISA plans. All other health insurance products (and consumers) are regulated by the states.

Republicans would impose a limited number of federal regulations on top of state regulations, including:

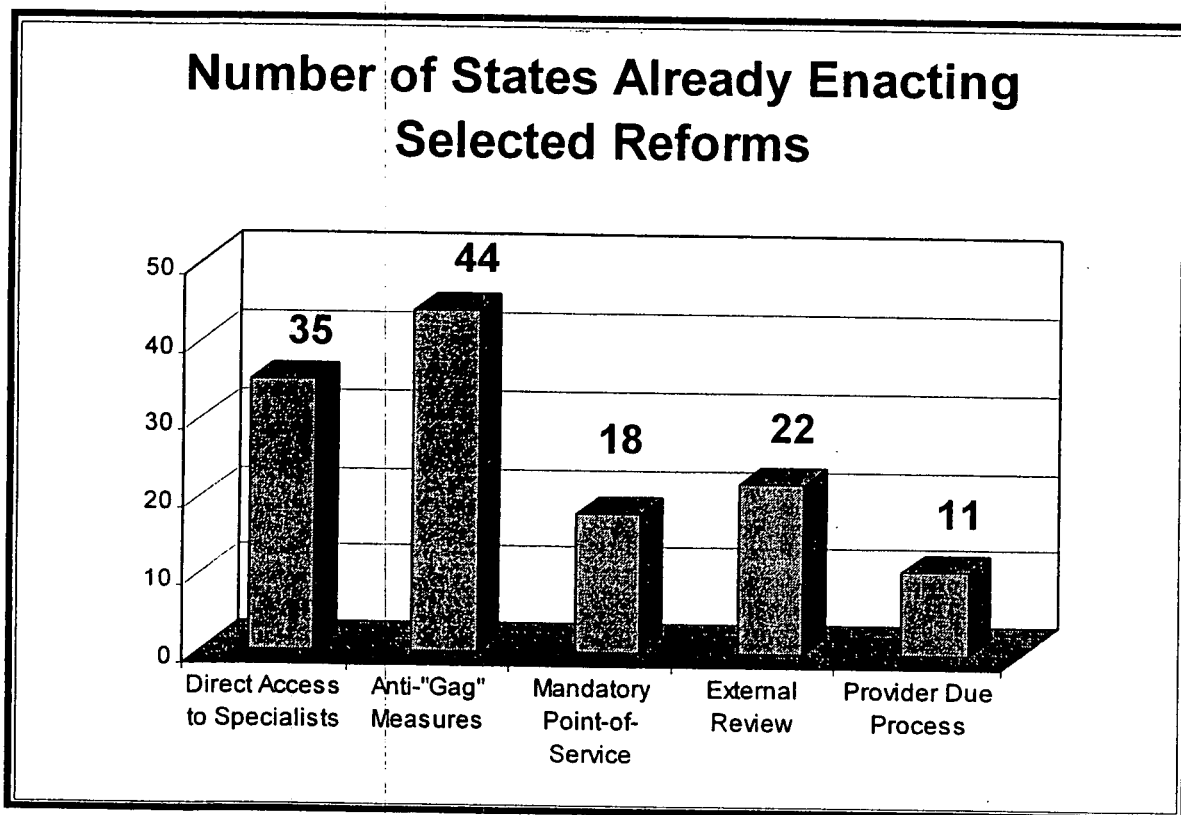
- ▶ **Consumer Information Mandates:** Federal regulations specifying what information health plans must provide consumers, including what is covered, how much enrollees may be required to pay, and requirements that must be met to ensure coverage of care received.
- ▶ **Mandated Internal/External Appeals Procedures:** Federally dictated requirements for resolving a claims dispute first within a health plan and, if necessary, before an outside authority.
- ▶ **Restrictions on Genetic Information Use:** Prohibits insurers from using predictive genetic information in determining an individual's risk.

However, Republicans recognize that most government oversight is best left to the states. Republicans confine the following mandates to only those plans *not* regulated by states:

- ▶ **Emergency Care:** Government-prescribed emergency care coverage, including reimbursement for whatever care a "prudent layperson" would deem necessary.
- ▶ **Mandated Point-of-Service Option:** Network plans would be required to allow patients to see out-of-network doctors, in exchange for higher copayments (with exemptions for small businesses and health plans with diverse network plans).
- ▶ **Access to OB/GYNs, Pediatricians:** Health plans are required to reimburse patients and doctors for OB/GYN and pediatric visits without referral.

- ▶ **Continuity of Care:** Health plans must continue to allow patients to see doctors 90 days after the doctor has left the plan's network.
- ▶ **Prohibition of "Gag" Clauses:** Health plans may not contractually forbid doctors from discussing expensive treatment options with patients.

In contrast, Democrats would apply over 100 pages of mandates to all health insurance products in an attempt to tighten federal control over the entire U.S. health care system. This is in spite of the fact that states are already taking the initiative in implementing many of the same regulations Democrats want. A handful of Senate Democrats presume they know better than 50 governors and state legislatures what American consumers need.



Only the Republican "Patients' Bill of Rights — Plus" transcends mandates and the influence of bureaucrats by returning to patients control over the vast majority of their own personal medical decisions.

RPC Staff Contact: Michael F. Cannon 224-2946